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Patrick van Berlo
PhD candidate



Megan Ryburn
Researcher



South-South migration: law, procedure, and exclusion in under-explored contexts

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With anti-migrant sentiment apparently rising in the global North, this blog post turns to exclusionary measures in relation to South-South migration.

Rarely has there been a more poignant time to write about migration and discrimination. The recent election of a candidate to the US presidency who has gone on record calling Mexicans rapists and promoting a ban on Muslims entering the country is deeply and profoundly disturbing. Whilst not generally expressed so vociferously or in such starkly racist terms elsewhere in the global North, rising xenophobia is increasingly a feature of politics and policy – playing a part, for example, in the recent Brexit vote in the UK.

It is not just in the global North, however, that anti-migrant sentiment is translated into action by both policy makers and the public. Nor does this translation always occur in obvious ways. Through our research, we seek to uncover the ways in which migrants in different parts of the globe face both overt and subtle exclusion on a daily basis, and how this is at times a product of law and policy. This blog will focus on a context of exclusion that has remained under-explored in the literature – that of Bolivian migrants in Chile – and will attempt to provide two frameworks to interpret the exclusionary measures being taken in this context: that of crimmigration and that of attrition through enforcement.

The exclusion of Bolivian migrants in Chile

Megan Ryburn explores through interviews and participant observation the everyday experiences of citizenship of Bolivian migrants in Chile. **Bolivians in Chile** form part of an increasing flow of migrants entering Chile from neighbouring countries. Many are forced to live what Megan terms *uncertain citizenship* – a series of exclusions from multiple aspects of citizenship across nation-state boundaries.

One aspect of citizenship that she explores with them is legal status (other aspects include social and political rights). Both through Chilean migration legislation as it exists ‘on paper’ and through the ways it is put into practice by some border agents and public officials, Bolivian migrants often face discrimination. As a human rights lawyer in Chile told Megan, Decree Law 1094, the most important legal instrument governing migration in Chile, is a norm dictated under the state of exception in the year 1975 [*during the Pinochet dictatorship*], which establishes a police regime ... with regards to foreigners in Chile.

In spite of some important changes to migration law over time, there remains a pervasive logic of exclusion stemming from Decree Law 1094 that permeates the residency and naturalisation application processes. The visa application fees, for example, are prohibitively high for low-wage migrants. Moreover, it can be very difficult for migrants to access and understand the application process, and this is often not facilitated by public officials. As Diana (not her real name), a migrant interviewee, explained, “They attend you very badly in all honesty and it makes you not want to ask anything.”

Poor service, complex bureaucracies, and this pervasive logic of exclusion can all act to push migrants into situations of ‘illegality’. Lack of legal status impacts on all other aspects of migrants’ citizenship. To give but one example, there are currently around 25,000 migrant children in Chile who exist in a legal limbo because they have not been assigned a Chilean identity number. Amongst other problems, non-assignation of an identity number

leads to their years of schooling not being officially recognised, meaning they cannot sit university entrance exams. Thus their exclusion from the legal domain of citizenship impacts on their ability to access education, which can be considered part of citizenship's social dimension. Megan's research revealed many other similar overlapping exclusions from different arenas of citizenship.

Crimmigration and attrition through enforcement

There are two concepts – used particularly by **Patrick van Berlo** in his research – that can help us to understand the processes leading to, and stemming from, these multiple exclusions from different dimensions of citizenship: crimmigration on the one hand and attrition through enforcement on the other.

The merger of criminal law and immigration law – a process described as 'crimmigration' for the first time **in 2006 by Juliet Stumpf** – has been explored **in different contexts** before on the Leiden Law Blog. Over the past decade, the term has been employed by many scholars across a variety of disciplines to denote not only the blurring boundaries between criminal and immigration *law*, but also the more general amalgamation of criminal justice and immigration enforcement. Thus, as **Van der Woude & Van Berlo (2015)** outline, "[t]his process of crimmigration manifests itself on different levels: the level of political and public discourse, where crime and immigration are increasingly lumped together in debates and political decision-making, the legislative level, where substantive criminal *law* and immigration *law* are increasingly merged – and the level of procedure and enforcement". The result of these processes is an ever-expanding population of outsiders across the criminal-migrant divide.

On the other hand, the notion of **attrition through enforcement** has been proposed to denote the idea that the return of 'undesired' migrants can be attained by extremely discouraging policies that rely on strict enforcement. As such, the idea is that – if the aim is to exclude certain categories of migrants from our society – the most effective way to do so is to cut their access to key services and institutions, including education, employment and public benefits. Simultaneously, local police forces must be deployed for immigration enforcement purposes. As such, this approach focuses much more on voluntary self-deportation, although it of course can be questioned whether such self-expulsion can indeed be seen as voluntary given the sober policies and strict enforcement measures required under this approach.

Crimmigration and attrition through enforcement seem to be closely related: they both focus on the exclusion – both physical and symbolic – of undesired migrants from society, albeit via different routes. Moreover, attrition

through enforcement may push migrants into illegality, which feeds into crimmigration rhetoric and practices. Indeed, the strict enforcement mechanisms required under the attrition through enforcement approach may be seen as ultimate expressions of crimmigration, where the migrant has been labelled as belonging to, and drawn into, a sphere of criminality.

In the literature on these notions, their presence and effects have been examined by looking at countries in the Global North. As this blog shows, however, they may also be valuable tools in denoting the situation in cases of South-South migration: in these contexts too, examples of crimmigration and attrition through enforcement seem indeed to be present. As outlined above, Bolivian migrants in Chile are pushed into illegality on the basis of their non-belonging and face an array of exclusionary policies that destabilise their position in society.

A note of hope

Nevertheless, in the Chilean context there have been moves to challenge such exclusionary policies, both from actors in civil society and from within government itself. [An initiative \(in Spanish\)](#) has just been established by the Chilean Departamento de Extranjería y Migraciones (Department of Immigration) to foment greater collaboration between the state and academia in order to improve public policy pertaining to migration. The [#NoMasRut100 campaign \(in Spanish\)](#), started by the NGO Servicio Jesuita a Migrantes, has gained significant traction as it seeks to prevent migrant children from entering into the legal limbo that results from non-assignment of an identity number.

Time will have to tell whether such initiatives will indeed manage to alter rhetoric, legislation and policy vis-à-vis migrants. Much work remains to be done, and it is essential for migration scholars to maintain a critical stance as we address discrimination in migrants' daily lives in the global North and the global South, applying concepts such as crimmigration and attrition through enforcement. But as we enter an era of anti-migrant sentiment in the global North, we would also do well to cast an eye globally at the projects and people who offer some possibility of hope.

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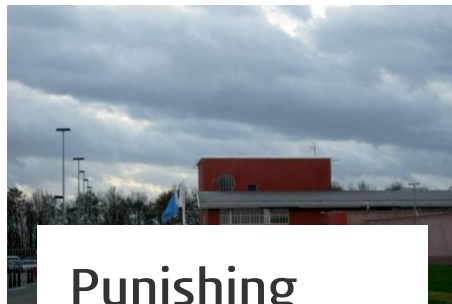
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